

traveled over a surface, and for the above reasons we argue that the Herr invention does not constitute section 102 prior art to the present invention.

Claim rejections under USC Section 103:

The examiner rejects claim 3 under 35 U.S.C. 103(a) as being unpatentable over Herr (5790243) in view of Lapeyre (4688933). Herr measures the contour of the surface of a road by measuring the distance light travels from a fixed reference point to a number of measured points. Lapeyre measures the distance from a fixed reference point to an object at a distance, using triangulation. Neither invention involves an image of a surface, and neither invention is intended to be used to measure distance traveled with respect to a surface, nor can either invention or a combination of the two be used to accomplish this function. The present invention does not utilize light transit time to measure distance, and it does not utilize triangulation. It utilizes changes between sequentially captured optical images. We therefore submit that the combination of Herr and Lapeyre does not constitute a valid 103(a) rejection of any of the claims of the present invention, and we submit that claim 3 is patentable as presented.

The examiner rejects claim 6 under 35 U.S.C. 103(a) as being unpatentable over Herr (5790243) in view of Lapeyre (4688933), and further in view of Truax (4502785), stating that:

"Truax shows telecentric lens (column 3 liens 59-66). It would be obvious to further modify Herr to use the telecentric lens taught by Truax because this allows the image to be any size that the user desires in any ratio to the actual size."

Truax does mention using a telecentric lens within a surface profiling invention. This is not relevant to the present invention, as the present invention does not profile a surface. The present invention measures distance traveled with respect to a surface being traveled over, and the telecentric lens is used to make that measurement in spite of possible variations in the profile of the surface (not because of such variations). In addition, since the inventions of Herr and Lapeyre cannot be combined to accomplish the function of the present invention, and since they do not contain the same elements as the claims of the present invention, we submit that no combination of Truax and Herr and Lapeyre renders any claim of the present invention obvious under 35 U.S.C. 103(a), and we submit that claim 6 is patentable as presented.

The examiner rejects claims 17 and 24 under 35 U.S.C. 103(a) as being unpatentable over Herr (5790243) as applied to claims 16, above, and further in view of Truax (4502785), stating that:

"Truax shows telecentric lens (column 3 liens 59-66). It would be obvious to further modify Herr to use the telecentric lens taught by Truax because this allows the image to be any size that the user desires in any ratio to the actual size."

We are not concerned in the present invention with making the image any particular size with respect to the actual size of the portion of the surface being imaged. We are only concerned with keeping the size of the image (of the portion of the surface being traveled

over which we are imaging) constant even if the distance from the surface varies. In addition, since the invention of Herr does not perform the same function as the present invention, and since the elements of the Herr invention are different from those of the present invention, we submit that no combination of the Herr invention and the Truax invention renders any claim of the present invention obvious under 35 U.S.C. 103(a), and we submit that claims 17 and 24 are patentable as presented. Further we submit that there is noting to suggest the combination of the telecentric lens of Truax with the Herr invention.

The examiner rejects claim 8 under 35 U.S.C. 103(a) as being unpatentable over Herr (5790243) in view of Lapeyre (4688933) as applied to claims 2 above, and further in view of Baker (2133241), stating:

"Baker shows the ability to stabilize the distance of the optics from the distance of the surface over time (column 6 lines 32-63). It would have been obvious to further modify Herr with the distance stability taught by Baker because this allows the ambient distance between the ground and the optics to remain constant and have the distance measuring device only measure the effect that the ground has on the device."

We submit that it would not be sensible to combine any distance stabilizing teaching of Baker with Herr, since it is precisely the measuring of variations in distance from a surface that the Herr invention is meant to accomplish. To stabilize the distance to the surface being measured with the Herr invention would be to render the Herr invention useless. The Herr invention specifically teaches away from such distance stabilization. We therefore submit that such a combination of The Herr and Baker inventions cannot properly be used in any valid 103(a) rejection. Further, since the Herr invention and the Lapeyre invention are inherently designed to measure distance to fixed objects, we submit that these references in no way suggest or make obvious the present invention, which is measures distance traveled over a surface without ever measuring any distance to a fixed object. We therefore submit that claim 8 and all other claims of the present application are patentable as submitted.

We have attached a copy of the above-referenced office action and a check in the amount of \$225 for an extension of time within the second month, with small entity status claimed.

Sincerely



Lee Weinstein, Registration #56,261

Certificate of express mailing: I certify that this document including the attached amended claims, check for \$225, and copy of the related office action were deposited with the US Postal Service as Express Mail, post office to addressee, March 17, 2006, express mail label number EQ247583242US.



Lee Weinstein